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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 22 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

Counsel describes the petitioner as "an internationally well-known diving coach in Australia" who "trained several of the best diving athletes in Australia" following a career in China during which "he personally trained diving athletes Xiaolin Yu and Shuping Tan, who won major national or international awards representing China in competitions."

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Counsel states that the petitioner "has received not only one major one-time

achievement . . . but several major internationally recognized awards, since the athletes trained by him won more than one such award."

While the abilities of a coach certainly contribute to an athlete's performance, we must interpret the "one-time achievement" clause very narrowly. In this instance, the petitioner himself has not received any awards at all. The awards received by his pupils merit due consideration, but in the end it is the athletes, not their coach, who earned the awards. Counsel states "[s]ince the athletes trained by [the petitioner] enjoy national or international acclaim, [the petitioner] is regarded as [having] such acclaim to the same degree." Counsel adds "few coaches will become famous enough to the general public to enjoy any so-called national or international acclaim." While the success of an athlete reflects well on the athlete's coach, counsel is not justified in the apparent assertion that such acclaim automatically or invariably attaches to the coaches of successful athletes.

Barring the alien's receipt of a major, international recognized award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Counsel states "[t]he evidence submitted has proved that . . . [the petitioner] trained several Olympic or world medallists." Elsewhere, counsel states that the petitioner "trained several Olympic and World Cup, and national title winners," and that the petitioner "trained athletes who won Olympic medals and World Champion medals in diving." The record, however, does not show that the petitioner has trained any Olympic medallists. Two athletes trained by the petitioner competed in the 2000 Olympic Games, but they placed fourth and fifth in their respective events, not highly enough to win medals. Counsel does not state that the petitioner has trained "Olympic athletes"; the only nouns that the adjective "Olympic" could possibly modify in the quoted passages are "medallists" and "winners." The record therefore contradicts, or at the very least fails to support, counsel's repeated claims that the petitioner has trained "Olympic . . . medallists" or "Olympic . . . title winners."

A 1996 certificate from the National Sports Commission of the People's Republic of China reads "this is to confer the World Champion Enlightenment Award to" the petitioner. The record contains no other information about this award.

The petitioner submits several witness letters. [redacted] head diving coach of the Australian Institute of Sport (AIS), where the petitioner worked as a coach from 1996 to 2001, indicates in a letter that the petitioner "trained or participated in the training" of Chinese and Australian divers who won several national and international prizes and awards. Mr [redacted] does not differentiate between athletes whom the petitioner has "trained" and those for whom he "participated in the training," nor does he clarify the nature of the participation. Mr. [redacted] asserts that the petitioner "was regarded as one of the best coaches in the field in China" and that "[t]he diving athletes coached by [the petitioner] accomplished the best ever achievements by Australian diving athletes. . . . [The petitioner] has trained several World Cup Medallists and National Diving

Championships (First Place title)." Mr. [redacted] asserts that the petitioner "is regarded as one of the TOP THREE diving coaches in Australia for his extraordinary work in the training of the athletes."

[redacted] manager of the AIS Diving Program, states that the petitioner "has worked with some of Australia's senior elite diving athletes and a squad of junior talented athletes under the general supervision of the AIS Diving Head Coach." Mr. [redacted] adds that the petitioner "has successfully coached at National Championships over recent years including several gold medal winning athletes."

Counsel states that a letter from [redacted] executive director of Diving Australia, Inc., refers to the petitioner as "one of the top three diving coaches in Australia." Ms [redacted] actually refers to "three of Australia's top coaches," which is rather different. In any event, this letter, thanking the petitioner for "valuable assistance in training the junior divers at the 2000 Diving Camp," is not documentation of the petitioner's receipt of any prize or award.

Counsel cites the accomplishments of [redacted] and [redacted] who won medals at the 2001 Goodwill Games. Counsel notes that the petitioner "trained or participated in the training of these two Chinese athletes when he was a diving coach in China" (emphasis in original). The petitioner, however, ceased coaching in China in 1995, six years before the 2001 Goodwill Games. If the petitioner can claim credit for what these divers achieved many years after he stopped working with them, then every coach who has ever worked with those divers can do the same.

Despite several weaknesses in counsel's claims regarding the above, it appears that the petitioner's coaching of prizewinning athletes is comparable, under 8 C.F.R. § 204.5(h)(4), to receipt of nationally or internationally recognized prizes and awards. Nevertheless, as explained above, the prizes won by athletes who trained under the petitioner cannot suffice, by itself, to establish the petitioner's eligibility.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner submits a copy of a certificate which, according to counsel, "certifi[es] that [the petitioner] is a Level 3 diving coach, which is the coach of the highest rank in Australia." The certificate reads, in part:

National Coaching Accreditation Scheme
This is to certify
[the petitioner]
has completed the
DIVING
Level 3 Course Requirements

Counsel cites no evidence to show that level 3 is "the highest rank" in Australia; that such rank is attained by only a small percentage at the very top of the field, as opposed to a substantial proportion of all diving coaches; or that completion of course requirements is synonymous with level 3 certification. The record contains no objective background documentation at all regarding Australia's National Coaching Accreditation Scheme. In any event, it is far from clear that completion of course requirements results in acclaim. The burden is on the petitioner to establish that completion of level three course requirements in the National Coaching Accreditation Scheme requires outstanding achievements. It cannot suffice for counsel simply to declare that the certificate is *prima facie* evidence of qualifying membership in an organization.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

Counsel cites exhibits 6 through 22 in support of this criterion. We note that exhibits 12 and 21 are certificates rather than published materials. Exhibits 6 through 11 are results from various competitions, consisting of lists of events, athletes, and scores. Counsel states "the official results definitely qualify as published materials in professional or major trade publications." Counsel, however, has not identified the professional or major trade publications from which these lists derive. Scores and results are not inherently published material. Perhaps more significantly, these results do not mention the petitioner at all.

Exhibits 13 through 17 are partially translated newspaper articles reporting the outcomes of competitions. Exhibits 18 through 20 are newspaper articles profiling divers [redacted] and [redacted] Counsel states "the newspaper articles qualify as published materials in major media," but the burden is on the petitioner to establish that the newspapers are in fact major media rather than strictly local publications. Some of the English-language articles do not contain dates or the title of the publications from which they derive. Counsel states that these articles, like the results discussed above, "clearly indicate that the diving athletes trained by [the petitioner] accomplished significant achievements in major national or international diving competitions."

Like the results discussed above, the petitioner's name never appears in any of the above newspaper articles. The plain wording of the regulation requires "[p]ublished materials about the alien." If the published materials are not about the alien, then on their face the materials do not fulfill the regulatory requirements. The regulation makes no special exception for diving coaches.

Outside of the cited range of articles, exhibit 4 in the record is an article about [redacted] selection as Australian Junior Male Diver of the Year. An accompanying photograph shows eight individuals, including the petitioner, but the caption contains no information about the petitioner other than his name. It does not even identify him as a coach; all the people in the photograph are collectively called "divers from the Chandler club." The petitioner's name does not appear anywhere in the body of the article.

Exhibit 22 is a one-column article from the Fall 2001 issue of *Inside USA Diving* magazine. The article, "East Meets West in Columbus, Ohio," reports that the petitioner "will be the first to participate" in a "technical exchange of knowledge between the U.S. Elite [Diving Academy] staff and prominent diving coaches around the world." The author of the article is [redacted] head coach and general manager of the U.S. Elite Diving Academy. The record also contains a letter from Mr. [redacted] indicating that he seeks to employ the petitioner as a diving coach. In his article, Mr. [redacted] lists the various projects that he and the petitioner will implement at the Academy. Thus, the only published article that can be said to be about the petitioner is a promotional piece written by his prospective employer.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel states "[w]e believe that the evidence submitted has proved that [the petitioner] has made original athletic contributions to his chosen field." Counsel does not specify what these original contributions are. Instead, counsel simply states "[s]ee Exhibit 1 to 21." The initial submission consists of 23 numbered exhibits. Thus, counsel simply offers the blanket statement that virtually everything documented in the record is an original contribution of major significance by the petitioner. So vague and general a claim cannot suffice; the petitioner cannot simply instruct the Bureau to look back at his career and regard it as a continuous string of major contributions. The Bureau is not obliged to comb the record for information which may be interpreted as evidence of contributions.

The director informed the petitioner that the initial submission was not sufficient to establish eligibility. The director instructed the petitioner to submit additional evidence. The director also asked specific questions intended to resolve ambiguities in the initial submission. For instance, the director noted counsel's repeated references to "Olympic . . . medallists," and asked the petitioner to identify the Olympic medallists he had trained. The director also asked the petitioner to clarify which athletes the petitioner personally trained "as opposed to participating in their training." The director acknowledged counsel's claim that the petitioner had won a major international award, but noted that the record contained no evidence of such an award. The director instructed the petitioner to identify the claimed award, and noted "this requirement cannot be met by someone else winning a major, internationally recognized award and then you claiming the award as your own based on your part in preparing the athlete or athletes." The director acknowledged counsel's assertion that "few coaches will become famous enough to the general public to enjoy any so-called national or international acclaim," but rejected counsel's corollary assertion that coaches are therefore entitled to share in whatever acclaim their athletes earn.

In response, the petitioner submits new letters and arguments from counsel. The letters address the director's request for clarification as to which athletes the petitioner personally trained. With regard to the letters, counsel states "the petitioner has personally trained (or participated in the training of . . .) at least the above-mentioned diving athletes." This assertion fails utterly to resolve the issue in contention, i.e., to distinguish between athletes whom the petitioner has personally trained, and athletes for whom the petitioner "participated in the training" to some undefined lesser extent.

The first letter is from [redacted] who states "I . . . have been to an Olympic Games, World Championships, and a Commonwealth Games, where my highest ranking to date is 3rd in the world. I can strongly state that these performances were largely due to extensive early development of technique by [redacted] and [the petitioner]." [redacted] who won a bronze medal at the Commonwealth Games and a silver medal at the World Cup, also credits his "extensive early development of technique by" the petitioner. These athletes do not specify how "early" this training was, nor do they indicate that the petitioner was actively coaching them when they reached the top levels of competition.

Two witnesses do not limit the petitioner's involvement to their early, pre-championship training. [redacted] states that the petitioner "was my first coach and he taught me most of the dives I perform today. . . . [The petitioner] took me to my first National Championships where I won three gold medals and one silver medal in my four events. . . . I believe he is the best coach I have had since I started diving two and a half years ago." [redacted] states "I was training with [the petitioner] at the time of winning my bronze medal at the World Championships."

Counsel asserts that it is "possible for a human being to reach" the high standards set by the classification, and that "[t]he law is not made to put a handful of elite into the ivory tower, but for people with real ability to achieve in any given field to come over to the United States and to do things they do best." Counsel does not explain why "real ability" should be equated with "extraordinary ability," or why regulations that specifically refer to "the small percentage at the top of the field" should not be limited to the "elite" (by definition, the very best) in a given field. Counsel asserts that the classification should not be "limited to a few Noble [sic] Prize winners," but the director had never mentioned the Nobel Prize in the request for further evidence.

With regard to the director's request for the identities of Olympic medallists trained by the petitioner, counsel asserts "[t]he language in the cover letter was supposedly [sic] to read that '[the petitioner] trained several Olympic Places winners and World medallists.' However, the words 'Places winners' were inadvertently omitted." Counsel thus indicates that the petitioner trained a fourth place winner and a fifth place winner. Counsel does not specify how low an athlete must place in the Olympics before they cease to be a "winner."

Supposedly the phrase "places winners" was mistakenly omitted every time counsel mentioned the Olympics in the initial cover letter. Counsel states "the petitioner did not have any intention to pretend that he had trained anyone who achieved a better record than the Fourth Place in the Olympic Games, and that the counsel did not have any intention to cheat the INS officer." Nevertheless, counsel flatly stated on page 13 of the initial cover letter that the petitioner "trained athletes who won Olympic medals." The insertion of the phrase "places winners" into this sentence would make no grammatical sense, and therefore we are not persuaded that counsel's reference to "athletes who won Olympic medals" was the accidental result of the inadvertent omission of the phrase "places winners." Counsel's trivial observation that "Fourth Place is really not that far from the Bronze medal" in no way salvages counsel's credibility. It remains that the petitioner signed his Form I-140 petition, thereby affirming under penalty of perjury "that this petition and the evidence submitted with it are all true and

correct." If the petitioner never read the claims set forth in counsel's cover letter, then he was in no position to attest to the accuracy of those claims.

In response to the director's instruction to identify a major internationally recognized award won by the petitioner, counsel asserts that no such award exists. Nevertheless, counsel maintains that the success of athletes coached by the petitioner should count, collectively, as the equivalent of a major award. It remains that the regulations do not allow for any such substitution with regard to the one-time achievement clause. The one-time achievement must be a major, internationally recognized award, rather than a cumulative summary of an entire career.

Counsel then turns to the lesser regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). Counsel argues, persuasively, that the consistently high performance of athletes under the petitioner's tutelage is effectively equivalent to awards received by the petitioner himself. We have already acknowledged as much above.

Turning to original athletic contributions of major significance, counsel asserts "[t]he petitioner has coached 15 athletes who won top three titles in major national or international diving competitions," and that the head diving coach at AIS considers the petitioner to be one of the top three diving coaches in Australia. The competitive performance of the petitioner's athletes is already taken into account with regard to prizes and awards. It is unacceptable to assert that this same competitive performance is also evidence of an original contribution of major significance; otherwise, every prize or award is also an original contribution, and the distinction between the two criteria becomes meaningless. Every athletic competition has a winner; this does not mean that every such competition results in original contributions of major significance. The record does not show that the petitioner has influenced the way that diving is coached or taught, or that he has otherwise made major contributions that affect the entire field (as opposed to the performance of those athletes whom he trains).

Counsel claims the petitioner has satisfied a previously unclaimed criterion:

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Counsel states that AIS Diving "is the most authoritative sports institution in Australia recognized by the International Olympic Committee as the National Governing Body for springboard and platform diving in Australia." Counsel observes that the petitioner has worked as a coach for AIS. It does not automatically follow, however, that every coach at AIS performs in a leading or critical role for that organization. The record clearly establishes that the petitioner worked under the supervision of a head coach. Employment by a distinguished organization is not synonymous with a leading or critical role.

Counsel concludes by stating "[t]he petitioner clearly distinguished himself from other diving coaches because he has trained Olympic contenders, world cup title winners, and winners of other major national or international diving titles, and the others have not." Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

[redacted]

> The Service [now the Bureau] disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

If an athlete does not automatically qualify by virtue of playing at the top level (i.e., the major leagues), then it is reasonable to extend this reasoning to say that a coach of athletes at the highest levels of competition does not automatically meet the extraordinary ability standard. Add to this the fact that, by the time they reached the top levels of competition, several of the athletes were no longer coached by the petitioner. The statute calls for "extensive documentation" of acclaim. The bulk of the petitioner's claim, however, rests not on varieties of documentation but on variations of a single basic argument: the petitioner must be one of the top coaches because his athletes have done so well.

The director denied the petition, acknowledging again counsel's assertion that national or international acclaim is rare for coaches. The requirement of national or international acclaim derives directly from the statute, and therefore we cannot arbitrarily accept counsel's contention that coaches are entitled to some alternative standard. The fact that such acclaim is found only among a "few coaches" is precisely the point. Acclaim comes in different forms for different occupations, however. If an alien has earned sustained national or international acclaim within the alien's field, then (depending on the field) such acclaim need not extend to being "famous . . . to the general public." A top plasma physicist, for example, is less likely to achieve recognition among the general public than a top basketball player, actor, or popular singer. While it is possible for an athletic coach to become generally known in his or her own right, fame outside of the field is not synonymous with sustained national or international acclaim in the field.

The director noted that the petitioner had failed to respond to several of the director's specific requests, such as the request for information regarding the petitioner's "World Champion Enlightenment Award" and the requirements for becoming a Level 3 diving coach in Australia. The director also noted the petitioner's failure to establish specific original contributions, in lieu of the general claim that the petitioner's career is a series of such contributions.

On appeal, counsel states that the officer who adjudicated the petition "did not know what the standard for 'alien of extraordinary ability' is. . . . [T]he officer used his or her own subjective standard to replace the standard set forth by Congress." It is counsel, however, who has maintained that the "sustained national or international acclaim" standard mandated by law is not appropriate for coaches, and that therefore "the sustained national or international acclaim of a coach should be inseparable [from] sustained national or international acclaim of the athletes." It is also counsel who asserts that the petitioner's successful career ought to be counted as a major internationally recognized award because no actual award exists, and that counsel's assertion that the petitioner "trained athletes who won Olympic medals" should not be construed as a claim that the petitioner trained athletes who won Olympic medals. Counsel has advanced several unsupported or tenuous claims, and counsel's interpretation of the regulations is not controlling.

[redacted] in a new letter, states "[t]he US Elite Diving Academy is the fastest growing and most successful program in the US because we have assembled a team of coaches that can produce world class divers," and that the petitioner "is a major reason for our success." Mr. [redacted] states that the petitioner is "one of the top .05% of coaches in the world that can develop divers to the highest competitive level," but he does not establish that this opinion is shared by top officials who have not worked directly with the petitioner. If the petitioner's reputation is largely limited to his own employers and athletes (as it appears to be), then he has not earned national or international acclaim.

The petitioner submits new background materials about the academy, including an article that begins "[t]he U.S. Elite Diving Academy is one of the most exciting new programs in the country." This article, like the only article to mention the petitioner by name, was written by [redacted] the Academy's general manager. Other materials submitted on appeal concern the Academy and some of its pupils, but have no direct relevance to the petition. The petitioner also submits several untranslated Chinese documents of unexplained relevance.

Several of the director's specific observations have gone unaddressed. Counsel's general statement that the adjudicating officer was insufficiently familiar with the regulations cannot serve as an overall rebuttal of the director's decision. While we acknowledge that the success of his athletes is a positive factor, systematic weaknesses elsewhere in the petitioner's evidence preclude a finding of eligibility.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as a diving coach to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.